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OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Gerd W. Kramer
Application No. 09/704,803
Filed: November 2, 2000
For: AUTOMATIC PROGRAMMING

:
: DECISION GRANTING PETITION
: TO ACCORD A FILING DATE OF
: NOVEMBER 2, 2000
:

This is a decision on the "Petition to correct the Filing-Date" filed February 21, 2001 with attachments, which is being treated as a petition to accord the above-identified application a filing date of November 2, 2000, rather than the initially accorded filing date of November 3, 2000. In view of the action requested, the petition is being treated as one filed under 37 CFR 1.183 requesting waiver of the 37 CFR 1.6(d) prohibition of new patent application filings by facsimile transmission.

For the reasons set forth hereafter, the petition is **GRANTED** such that the above-identified application is accorded a filing date of November 2, 2000.

Petitioner alleges, in effect, that the chain of events leading to his facsimile submission of the above-identified application on November 2, 2000 warrants a waiver of the prohibition of facsimile filing of new patent applications. The relevant chain of events documented by the petition are as follows:

- (1) On October 31, 2000 petitioner deposited the application with United Parcel Service, Inc. (UPS) in Heidelberg, Germany for "UPS Worldwide Express" delivery service to the U.S. Patent and Trademark Office (USPTO) with a guaranteed delivery date of November 1, 2000. As shown by a copy of petitioner's UPS mailing label (provided with the petition), petitioner clearly wrote the address specified at 37 CFR 1.1(a) for mailing an application to the USPTO.
- (2) A printout of the UPS internet tracking data (also provided with the petition), indicates that the package containing the application arrived at a UPS sorting station in Alexandria, Virginia the following day (November 1, 2000) at 1:52 p.m.
- (3) The UPS internet tracking data also shows that despite the proximity of the Alexandria, Virginia sorting station to the Arlington, Virginia USPTO location, UPS sorting station personnel failed to recognize the address on the application package as that of the USPTO (e.g., UPS tracking data for November 2, 2000 characterizes the proper 37 CFR 1.1(a) address as an "Incomplete Address").

(4) Further documented by the UPS internet tracking data is that on November 2, 2000 the application package was routed from one incorrect delivery location in Washington, D.C. to another incorrect delivery location in Baltimore, Maryland; and that the package was finally rerouted to the USPTO on November 3, 2000 where the package was received later that day.

It is noted that the mailed application was properly accorded a filing date of November 3, 2000 as the application was received that day in the U.S. Patent and Trademark Office (USPTO).

On November 2, 2000 at 7:33 p.m. EST (at a time when UPS tracking data available over the internet indicated repeated UPS mishandling of the application), petitioner submitted by facsimile duplicate application papers to the USPTO. On November 7, 2000, however, the duplicate application papers were properly returned to petitioner by Office personnel with a letter notifying petitioner that such facsimile transmitted papers are not processed by the USPTO as an application filing.

Petitioner requests a filing date of November 2, 2000 for the application based on his facsimile submission that day of duplicate application papers in view of the chain of events leading thereto. Petitioner is concerned that any foreign priority benefit available to the application under 35 USC 119 to a corresponding German patent application filed November 2, 1999 will be lost unless the request is granted.

On March 20, 2001, in response to a telephone communication from USPTO Legal Advisor James Engel, petitioner resubmitted by mail the duplicate application papers originally submitted by facsimile on November 2, 2000. A review of those papers reveals that they are identical to the application papers received in the mail on November 3, 2000. It is noted that prior to the date of this decision, petitioner also filed the necessary filing fee for the application as well as the required fee for this petition.

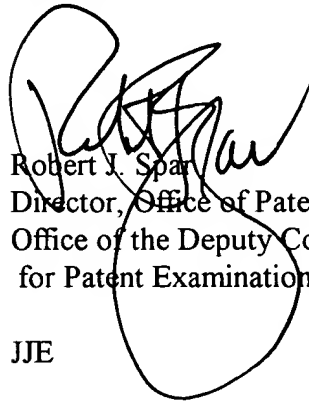
As set forth at 37 CFR 1.6, the USPTO does not permit the filing of new application papers by facsimile. Therefore, the USPTO will not generally entertain a petition to accord an application filing date based upon a facsimile transmission of application papers. The following factors, however, are considered to constitute an "extraordinary situation" in terms of 37 CFR 1.183 so as to militate in favor of granting petitioner's request: (1) the particular chain of events documented by the petition that led up to petitioner's facsimile transmission of duplicate application papers; (2) petitioner's status as a *pro se* applicant; (3) the availability of the above-described UPS tracking data over the internet at the time petitioner made the facsimile transmission *pro se*; (4) the misidentification of the USPTO address as an "Incomplete Address" by entries made into UPS internet tracking data; and (5) the foreign priority patent rights that are at stake in the application.

Receipt is acknowledged of an information disclosure statement and a certified copy of the foreign priority document filed February 2, 2001.

The duplicate application papers transmitted by facsimile on November 2, 2000 have been placed in the application file, however, the application papers received on November 3, 2000 will be used for examination purposes.

The application is being forwarded to Initial Patent Examination Division for further processing with a filing date of **November 2, 2000**, using the application papers received on November 3, 2000.

Any inquiries related to this decision should be directed to James Engel at (703) 308-5106.



Robert J. Spar
Director, Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

JJE